

EXPANSION PROJECT

MEMORANDUM OF UNDERSTANDING (MOU)



1936214 - R8 SEMS

2137



United States
Department of
Agriculture

Forest
Service

Black Hills
National
Forest

Nemo Ranger Dist.
460 Main Street
Deadwood, SD 57732

Reply to: 2810
(89-5)

Date: March 16, 1989

Mr. Doug Stewart
Project Manager
Brohm Mining Corporation
P.O. Box 485
Deadwood, SD 57732

Dear Doug:

Enclosed please find a copy of the Memorandum of Understanding for the Gilt Edge Mine Expansion Project. Now that we have started the EIS process we need to get this MOU finalized and signed. This is the latest draft that we reviewed in January. Please sign and return this copy.

If you have any questions on this MOU please contact Don Murray, 578 2744.

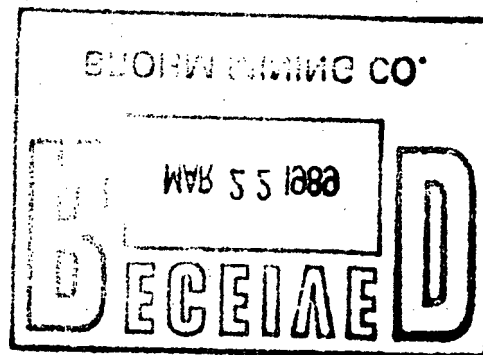
Sincerely,

David E. Blackford
DAVID E. BLACKFORD
District Ranger

Enclosures

cc: D. Kistler, SO

DM:rw



MEMORANDUM OF UNDERSTANDING
Between
THE BLACK HILLS NATIONAL FOREST, FOREST SERVICE,
And
BROHM MINING CORPORATION
APPLICANT

I. INTRODUCTION AND PURPOSE

This Memorandum of Understanding (MOU) is entered into by the Black Hills National Forest, Forest Service, U.S. Department of Agriculture, hereinafter known as the "Forest Service", and Brohm Mining Corporation, hereinafter known as "Applicant". This MOU concerns the Applicant's proposed Gilt Edge sulphide mine project, hereinafter known as the "project".

The Applicant is a private agent that proposes to cause an Environmental Impact Statement (EIS) to be completed in accordance with applicable federal and state laws, regulations, and policies, and with this MOU.

NOW, THEREFORE, it is mutually agreed by both parties hereto as follows:

Development of the proposed project requires the preparation of an EIS which will be prepared in accordance with the National Environmental Policy Act (NEPA), Council on Environmental Quality Regulations (40 CFR, Parts 1500-1508), Forest Service Handbook (FSH) 1909.15 and Chapter 1950 of the Forest Service Manual (FSM), and other applicable laws, regulations, and policy.

The Forest Service and the Applicant desire that the environmental analysis and documentation preparation process be conducted in a timely and expeditious manner, as more fully detailed herein. To facilitate that objective, this Memorandum of Understanding establishes conditions, time frames, and procedures for the analysis and preparation of the appropriate documents.

The Forest Supervisor is the official responsible for making the decision with respect to the EIS. The District Ranger is responsible for conducting and managing the analysis and the preparation of the document. All contacts with the USDA, Forest Service, by the Applicant or representative shall be through the District Ranger or his designated representative.

This Memorandum of Understanding and actions taken under it do not in any way commit the Forest Service to make a decision favorable to the Applicant.

II. THIRD PARTY APPROACH

The Forest Service shall assemble an inhouse Interdisciplinary Team (IDT) of technical experts to manage NEPA process, determine the scope of the analysis, and assure appropriate documentation is prepared. The IDT shall be supported by a contractor as described below.

The Forest Service and the Applicant agree to utilize the "Third Party" approach to provide support for the IDT and prepare the analysis and EIS. The Applicant shall solicit proposals from qualified contractors for preparing the analysis and EIS. The Forest Service shall participate in the review and analysis of proposals submitted, including interviews of the prospective contractors and contractor personnel and shall generally assist the Applicant in the selecting process. Based upon such process, the Applicant shall submit a proposed contractor to the Forest Service personnel. The Forest Service shall be responsible for specifying the information to be developed in the analysis and EIS, and shall supervise the gathering, analysis, and presentation of the information. The Forest Service shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the EIS. Responsibility for assuring compliance with the requirements of the National Environmental Policy Act of 1969 (NEPA), and CEQ Regulations adopted pursuant thereto, appearing in 40 CFR 1500 - 1508, and the Forest Service Manual and Handbook, for their respective authorities. All studies, analyses, maps, drawings, and other documents relating to the EIS will become the sole property of the USDA, Forest Service, except that the Applicant may receive and retain copies thereof.

III. SELECTION OF THE CONTRACTOR (THIRD PARTY)

Using the procedure outlined in Section II of this Memorandum, the Applicant shall be responsible for identifying objective contractors qualified to conduct the analysis and prepare the NEPA documents. The Applicant will submit the qualifications of the identified contractors to the Forest Service for evaluation. Within 10 working days after submittal by Applicant, the Forest Service shall select or reject a contractor based on its evaluation of the contractor's qualifications. A contractor must meet the following minimum criteria:

1. The contractor must have demonstrated expertise, technical competence, and capability for evaluating the physical, biological, economic, and social factors related to the proposed action.
2. The contractor must have a good record of performance on contracts with Government agencies or public bodies, and with private industry, including satisfactory work and the ability to meet schedules.
3. The contractor must have the capacity to perform the work (including any specialized services) within the time limitations, considering the contractor's current and planned work load.
4. The contractor must have demonstrated familiarity with types of problems applicable to the project.
5. The contractor must have demonstrated ability to produce thorough, readable, and informative documents.
6. The contractor must have demonstrated expertise in working with the National Environmental Policy Act (NEPA) (PL 91-190), all other federal environmental laws and regulations, and any applicable state or local laws and regulations.
7. The contractor must be readily available to the Black Hills National Forest headquarters for consultation and meetings.

8. The contractor must be objective, must have no financial or other interest in the outcome of the application for the easement, and must be willing to execute a conflict of interest and objectivity certification in substantially the form attached hereto.
9. The Forest Service shall be provided with a copy of the proposed form of contract to be entered into for performance of the environmental assessment. Prior to execution of said contract, Applicant shall obtain Forest Service approval of said contract, as being in compliance with this Memorandum of Understanding and as including performance of work necessary to assure compliance with requirements of the National Environmental Policy Act of 1969. Upon completed execution of the agreement, Applicant shall provide the Forest Service with an executed copy thereof. Forest Service review of the proposed form of contract shall be completed with 10 working days after receipt thereof.

IV. GENERAL DESCRIPTION OF CONTRACTOR'S RESPONSIBILITIES

The Forest Service will make the final determination of the scope and contents of the environmental document. The contract between the Applicant and the contractor will specify all procedures required by NEPA and CEQ and other regulations pertaining to actions of the Forest Service and cooperating agencies to insure the adequacy of the environmental document.

The contractor will conduct a scoping process (pursuant to 40 CFR 1501.7 and Forest Service Handbook 1909.15, (Chapter 10) under the direction of the Forest Service. At the end of the process, the contractor shall prepare a scoping statement, identifying the significant issues and concerns related to the proposed action, and submit it to the Forest Service for evaluation. The scoping statement shall be simultaneously submitted to the Applicant for review and comment.

The Forest Service shall determine the scope and content of the analysis. The contractor shall prepare a detailed draft study plan to guide the NEPA process and submit it to the USDA, Forest Service within 45 days after approval of the scoping statement.

Part I of the study plan will establish criteria and standards such as the following items:

1. The kind, detail, and accuracy of data.
2. The depth or level of analysis.
3. The formulation and evaluation of alternatives.
4. The determination of whether the environmental consequences of the proposed action are significant.

Part II of the study plan will address procedural matters such as:

1. Type of document to be prepared, and length and detail of documentation.
2. Format and content of documents.
3. Coordination of efforts and exchange of information.
4. Procedures for review, comment, and revision of section of the EIS and study report.
5. Procedures for release and disclosure of data and information.
6. Establishing a schedule for completion of the draft and final NEPA documents and section thereof.
7. Procedures responding to comments received during the draft review and comment period.

The contractor will be responsible for preparing any necessary environmental documents in accordance with the conditions and guidelines set forth in the study plan and as directed by the Forest Service, in order to comply with NEPA and CEQ Regulations adopted pursuant thereto at 40 CFR 1500-1508, the Forest Service Manual and Handbook.

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All costs incurred with the employment of the contractor shall be the sole responsibility of the Applicant, and the Applicant agrees to hold harmless and indemnify the Forest Service with respect to any and all claims, demands, cause(s) of work, or from purchases of materials by contractor, or any services utilized in the analysis or the preparation of the NEPA documents. Applicant shall make no claims against the Forest Service for any costs arising from the work of the contractor.

The Applicant shall be responsible for the costs of printing and reproducing copies of the draft and final NEPA documentation and study report, and shall furnish the Forest Service with 100 copies of each document for use and distribution.

The Applicant agrees to enter into a collection agreement attached herein to pay for costs incurred by the Forest Service above the normal administrative duties for performance of work required by law or policy but not funded by the agency on a time schedule beneficial to the Applicant.

In the event of a challenge to the legality and adequacy of Forest Service compliance with the National Environmental Policy Act of 1969, or compliance with CEQ Regulations adopted pursuant thereto under 40 CFR 1500-1508 and the Forest Service Manual and Handbook, for the EIS, the Applicant shall cooperate and shall provide by contract that the contractor will also cooperate in the defense of any such challenge, it being understood that the primary responsibility for defense of any such action will rest with the Forest Service. Nothing herein shall be deemed to preclude Applicant from instituting such a challenge.

VI. SCHEDULING FOR ANALYSIS AND REVIEW

The parties agree to employ diligent efforts and adhere to various schedules specified herein. Nothing in this clause shall affect the right and liabilities of any party hereto under local, state, or federal laws. Performance of federal obligations hereunder is subject to appropriations of Congress.

VII. MISCELLANEOUS

A. The parties have identified the below named individuals as their representatives for purposes of all notices, communication, and contact required by this Memorandum of Understanding:

1. Applicant:

2. USDA, Forest Service

B. All requests for authorization to occupy or conduct investigations upon National Forest lands shall be made to the Nemo District Ranger, Deadwood, South Dakota.

C. Termination. This Memorandum of Understanding may be terminated upon 30 days written notice by either party.

D. Amendment. This agreement may be amended or modified at any time by the mutual written agreement of the parties.

Black Hills National Forest, Forest Service, U.S. Department of Agriculture

y

BY: _____ Date: _____
Forest Supervisor

APPROVED
Brohm Mining Corporation

BY: _____ Date: _____
Applicant

BY: _____ Date: _____
Applicant

ATTENTION: FALSE STATEMENTS IN THE
FOLLOWING CERTIFICATION ARE PUNISHABLE
BY FINE AND IMPRISONMENT (U.S. CODE,
TITLE 10, SEC. 1001). READ THE
CERTIFICATION CAREFULLY BEFORE COMPLETION
AND EXECUTION.

CONFLICT OF INTEREST AND OBJECTIVITY CERTIFICATION

I CERTIFY that _____, prospective
contractor for preparation of an EIS concerning Brohm Mining
Corporation's Application related to the Gilt Edge sulphide mine
project,

1. Has no financial or other interest in the outcome of the
Application;
2. Is not subcontracted for any work related to this
Application to the firm responsible for the engineering
and design of facilities that may be proposed in
relation to this Application;
3. Is not affiliated with, or a subsidiary of, the firm
responsible for the engineering and design of facilities
under this Application.
4. Is not financially dependent upon the Applicant or the
firm responsible for the engineering and design of
facilities under this Application; and

I FURTHER CERTIFY that I have been duly authorized by the
firm to execute this Certification on its behalf, and that all of
the statements made herein are true, correct, and complete, to
the best of my knowledge and belief, and are made in good faith.

Signature

Date signed

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Between
THE BLACK HILLS NATIONAL FOREST, FOREST SERVICE,
And
BROHM MINING CORP.
APPLICANT

I. INTRODUCTION AND PURPOSE

This Memorandum of Understanding (MOU) is entered into and made effective this 23rd day of March, 1989 by the Black Hills National Forest, Forest Service, U.S. Department of Agriculture, hereinafter known as the "Forest Service", and Brohm Mining Corp., hereinafter known as "Applicant". This MOU concerns the Applicant's proposed Gilt Edge expansion project, hereinafter known as the "Project".

The Applicant is a private company that proposes to cause an Environmental Impact Statement (EIS) to be completed in accordance with applicable federal and state laws, regulations, and policies, and with this MOU.

NOW, THEREFORE, it is mutually agreed by both parties hereto as follows:

Development of the proposed Project requires the preparation of an EIS which will be prepared in accordance with the National Environmental Policy Act (NEPA), Council on Environmental Quality Regulations (40 CFR, Parts 1500-1508), Forest Service Handbook (FSH) 1909.15 and Chapter 1950 of the Forest Service Manual (FSM), and other applicable laws, regulations, and policy.

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The Forest Service and the Applicant agree to utilize the "Third Party" approach to provide support for the IDT and prepare the analysis and EIS. The Applicant shall solicit proposals from qualified contractors for preparing the analysis and EIS. The Forest Service shall participate in the review and analysis of proposals submitted, including interviews of the prospective contractors and contractor personnel and shall make the final selection of the contractor. The Forest Service shall be responsible for specifying the information to be developed in the analysis and EIS, and shall supervise the gathering, analysis, and presentation of the information. The Forest Service shall have sole authority for approval of the statements, analyses, and conclusions included in the EIS. The Forest Service shall have responsibility for assuring compliance with the requirements of the National Environmental Policy Act of 1969 (NEPA), and CEQ Regulations adopted pursuant thereto, appearing in 40 CFR 1500-1508, and the Forest Service Manual and Handbook, for their respective authorities. All studies, analyses, maps, drawings, and other documents relating to the EIS will become the sole property of the USDA, Forest Service, except that the Applicant will receive and may retain copies thereof.

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1. The contractor must have demonstrated expertise, technical competence, and capability for evaluating the physical, biological, economic, and social factors related to the proposed action.
2. The contractor must have a good record of performance on contracts with Government agencies or public bodies, and with private industry, including satisfactory work and the ability to meet schedules.

3. The contractor must have the demonstrated capacity to perform the work (including any specialized services) within the time limitations, considering the contractor's current and planned work load.
4. The contractor must have demonstrated familiarity with types of problems applicable to the Project.
5. The contractor must have demonstrated ability to produce thorough, readable, and informative documents.
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9. The Forest Service shall be provided with a copy of the proposed form of contract to be entered into for performance of the environmental impact statement. Prior to execution of said contract, Applicant shall obtain Forest Service approval of said contract, as being in compliance with this Memorandum of Understanding and as including performance of work necessary to assure compliance with requirements of the National Environmental Policy Act of 1969. Upon completed execution of the agreement, Applicant shall provide the Forest Service with an executed copy thereof. Forest Service review of the proposed form of contract shall be completed within 10 working days after receipt thereof.

IV. GENERAL DESCRIPTION OF CONTRACTOR'S RESPONSIBILITIES

The Forest Service will make the final determination of the scope and contents of the environmental document. The contract between the Applicant and the contractor will specify that contractor will prepare the EIS in accordance with all applicable federal, state and local regulations. The selected contractor will be under the sole guidance and direction of the Forest Service.

The contractor will conduct a scoping process (pursuant to 40 CFR 1501.7 and Forest Service Handbook 1909.15., Chapter 10) under the direction of the Forest Service. At the end of the process, the contractor shall prepare a scoping statement, identifying the significant issues and concerns related to the proposed action, and submit it to the Forest Service for approval. The scoping statement shall be simultaneously submitted to the Applicant for review and comment.

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V. RESPONSIBILITY FOR COSTS

All costs incurred with the employment of the contractor and subject to the contract between the Applicant and contractor shall be the sole responsibility of the Applicant, and the Applicant agrees to hold harmless and indemnify the Forest Service with respect to any and all claims, demands, cause(s) of work, or from purchases of materials by contractor, or any services utilized in the analysis or the preparation of the NEPA documents pursuant to the contract between Applicant and contractor.

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The Applicant agrees to enter into a collection agreement attached herein to pay for costs incurred by the Forest Service above the normal administrative duties for performance of work required by law or policy but not funded by the agency on a time schedule beneficial to the Applicant.

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VI. SCHEDULING FOR ANALYSIS AND REVIEW

The parties agree to employ diligent efforts and use their best efforts to adhere to various schedules to be agreed upon by the parties. Nothing in this clause shall affect the right and liabilities of any party hereto under local, state, or federal laws. Performance of federal obligations hereunder is subject to appropriations of Congress.

VII. MISCELLANEOUS

- A. The parties have identified the below named individuals as their representatives for purposes of all notices, communication, and contact required by this Memorandum of Understanding:

1. Applicant:

Douglas E. Stewart

2. USDA, Forest Service

Dave Blackford (District Ranger)

Donald Murray (Minerals Specialist)

B. Unless otherwise directed, all requests for authorization to occupy or conduct investigations upon National Forest lands shall be made to the Nemo District Ranger, Deadwood, South Dakota.

C. Termination. This Memorandum of Understanding may be terminated upon 30 days written notice by either party.

D. Amendment. This agreement may be amended or modified at any time by the mutual written agreement of the parties.

Black Hills National Forest, Forest Service, U.S. Department of Agriculture.

BY: _____ Date: _____
Darrel L. Kenops,
Forest Supervisor

APPROVED
Brohm Mining Corp.

BY: _____ Date: _____
Rex L. Outzen

BY: _____ Date: _____
Douglas E. Stewart

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FOLLOWING CERTIFICATION ARE PUNISHABLE
BY FINE AND IMPRISONMENT (U.S. CODE,
TITLE 10, SEC. 1001). READ THE
CERTIFICATION CAREFULLY BEFORE COMPLETION
AND EXECUTION.

CONFLICT OF INTEREST AND OBJECTIVITY CERTIFICATION

The UNDERSIGNED hereby CERTIFIES that it has entered into an agreement for preparation of an EIS concerning Brohm Mining Corp.'s Application related to the Gilt Edge expansion project, and that it

1. Has no financial or other interest in the outcome of the Application;
2. Is not subcontracted for any work related to this Application to the firm responsible for the engineering and design of facilities that may be proposed in relation to this Application;
3. Is not affiliated with, or a subsidiary of, the firm responsible for the engineering and design of facilities under this Application;
4. Is not financially dependent upon the Applicant or the firm responsible for the engineering and design of facilities under this Application; and

The UNDERSIGNED FURTHER CERTIFIES that it is duly authorized to execute this Certification, and that all of the statements made herein are true, correct, and complete, to the best of its knowledge and belief, and are made in good faith.

Signature

Date Signed



United States
Department of
Agriculture

Forest
Service

Black Hills
National
Forest

Nemo Ranger Dist.
460 Main Street
Deadwood, SD 57732

Reply to: 2810
(89-5)

Date: March 16, 1989

Mr. Doug Stewart
Project Manager
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Dear Doug:

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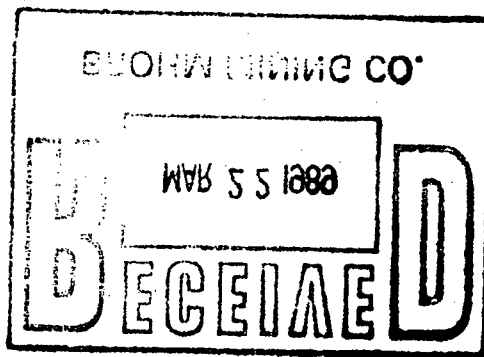
Sincerely,

David E. Blackford
DAVID E. BLACKFORD
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Enclosures

cc: D. Kistler, SO

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In the event of a challenge to the legality and adequacy of Forest Service compliance with the National Environmental Policy Act of 1969, or compliance with CEQ Regulations adopted pursuant thereto under 40 CFR 1500-1508 and the Forest Service Manual and Handbook, for the EIS, the Applicant shall cooperate and shall provide by contract that the contractor will also cooperate in the defense of any such challenge, it being understood that the primary responsibility for defense of any such action will rest with the Forest Service. Nothing herein shall be deemed to preclude Applicant from instituting such a challenge.

VI. SCHEDULING FOR ANALYSIS AND REVIEW

The parties agree to employ diligent efforts and adhere to various schedules specified herein. Nothing in this clause shall affect the right and liabilities of any party hereto under local, state, or federal laws. Performance of federal obligations hereunder is subject to appropriations of Congress.

VII. MISCELLANEOUS

A. The parties have identified the below named individuals as their representatives for purposes of all notices, communication, and contact required by this Memorandum of Understanding:

1. Applicant:

2. USDA, Forest Service

B. All requests for authorization to occupy or conduct investigations upon National Forest lands shall be made to the Nemo District Ranger, Deadwood, South Dakota.

C. Termination. This Memorandum of Understanding may be terminated upon 30 days written notice by either party.

D. Amendment. This agreement may be amended or modified at any time by the mutual written agreement of the parties.

Black Hills National Forest, Forest Service, U.S. Department of Agriculture

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BY: _____ Date: _____
Forest Supervisor

APPROVED
Brohm Mining Corporation

BY: _____ Date: _____
Applicant

BY: _____ Date: _____
Applicant

ATTENTION: FALSE STATEMENTS IN THE
FOLLOWING CERTIFICATION ARE PUNISHABLE
BY FINE AND IMPRISONMENT (U.S. CODE,
TITLE 10, SEC. 1001). READ THE
CERTIFICATION CAREFULLY BEFORE COMPLETION
AND EXECUTION.

CONFLICT OF INTEREST AND OBJECTIVITY CERTIFICATION

I CERTIFY that _____, prospective
contractor for preparation of an EIS concerning Brohm Mining
Corporation's Application related to the Gilt Edge sulphide mine
project,

1. Has no financial or other interest in the outcome of the
Application;
2. Is not subcontracted for any work related to this
Application to the firm responsible for the engineering
and design of facilities that may be proposed in
relation to this Application;
3. Is not affiliated with, or a subsidiary of, the firm
responsible for the engineering and design of facilities
under this Application.
4. Is not financially dependent upon the Applicant or the
firm responsible for the engineering and design of
facilities under this Application; and

I FURTHER CERTIFY that I have been duly authorized by the
firm to execute this Certification on its behalf, and that all of
the statements made herein are true, correct, and complete, to
the best of my knowledge and belief, and are made in good faith.

Signature

Date signed

BROHM PROJECT SCHEDULE

- Scoping Meeting May 2-4
- Submit Draft Scoping Results (ICOs) May 22
- Submit Draft Study Plan to JRC May 30
 - EIS Outline
 - Detailed Analysis Procedures
 - Draft Significance Criteria
 - (provide thorough references)
- ID Team Meeting & ENSR Site Visit June 12-13
 - Identify Alternatives
 - Identify Baseline Data Deficiencies
 - Finalize Significance Criteria
- Finalize Study Plan June 23
 - (also latest date for project
 - changes that require additional
 - data)
- Complete Baseline Data Collection and Final Data to ENSR August 18
- Submit PDEIS October 13
- Receive Comments on PDEIS November 17
- Submit DEIS to BHFS December 20
- Publish DEIS January 1990
- Comment Period Ends April
- Submit FEIS June
- Submit Response to Comments on FEIS August
- Record of Decision August